

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

WINSTON GREY BRAKEALL, Plaintiff, vs. DERRICK BIEBER, Unit Manager at SDSP, in his individual capacity, WILLIAM ALLEN, Correctional Officer with the Rank of Corporal at SDSP, in his individual capacity, MIKE LEIDHOLT, in his official capacity, and DARIN YOUNG, in his official capacity Defendants.	4:16-CV-04057-KES AMENDED ORDER APPOINTING COUNSEL
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The court previously appointed Daniel B. Weinstein to represent plaintiff, Winston Grey Brakeall. Docket 224. Mr. Weinstein died on December 11, 2020. Jason R. Sutton of Boyce Law Firm, LLP, is willing to accept this court's appointment and assume representation of Brakeall on his remaining claims: (1) Eighth Amendment failure to protect claims against Derrick Bieber, William Allen, Mike Leidholt, and Darin Young and (2) common law negligence claims against Mike Leidholt and Darin Young. Mr. Sutton is willing to accept this appointment on a pro bono basis, subject only to him being entitled to fees under 42 U.S.C. § 1988 in the event plaintiff is the prevailing party in this action, or under the Fifth Amended Plan for the Attorney Admission and Pro Bono Fund, § 2.6, which provides:

In a civil case where an attorney is appointed to represent an indigent party, the judge to whom the case is assigned may authorize certain payments. These payments may consist of

reasonable out-of-pocket expenses and a partial payment of attorney's fees. The partial attorney's fees payment shall not exceed 25 percent of a fair and reasonable fee for the work performed. Payment of more than 25 percent of the attorney's fees may be made upon recommendation and approval by the presiding judge. This amount shall not exceed \$10,000 without the prior written approval of the presiding judge on the case. The fee paid shall be offset by the amount of fees recovered from other sources.

In the event the party represented is ultimately successful on the merits and is awarded costs and attorney's fees, the out-of-pocket expenses allowed pursuant to this paragraph will be deducted from such award and redeposited into the District Court Fund.

Jason R. Sutton is appointed for Brakeall's Eighth Amendment failure to protect claims against defendants, Bieber, Allen, Leidholt, and Young. Mr. Sutton is also appointed for Brakeall's common law negligence claims against Leidholt and Young.

Thus, it is

ORDERED that Jason R. Sutton of Boyce Law Firm, LLP, at 300 South Main Avenue in Sioux Falls, South Dakota, is appointed as counsel for plaintiff herein, to serve without compensation except such as he may be entitled to under 42 U.S.C. § 1988, or from the Attorney Admission Fund.

ORDERED that Brakeall's motion to stay/motion for appointment of counsel (Docket 278) is denied as moot.

Dated January 5, 2021.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE